

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

was overpaid for mileage reimbursements; and (2) whether OWCP properly found appellant at fault in creation of the overpayment, thereby precluding waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>3</sup> The facts of the case as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On October 29, 2000 appellant, then a 39-year-old mail processor, filed an occupational disease claim (Form CA-2) alleging that she developed bilateral carpal tunnel syndrome due to lifting trays of mail at work. OWCP initially accepted the claim for bilateral carpal tunnel syndrome. It later expanded the acceptance of the claim to include bilateral epicondylitis and lesion of ulnar nerve (cubital tunnel syndrome), left side.

Appellant submitted numerous medical travel refund requests, Form OWCP-957, for travel to and from her duty office and for medical services in connection to her employment injury.<sup>4</sup>

An April 8, 2015 investigative report from the employing establishment's Office of Inspector General (OIG) analyzing appellant's medical billing payments, including transportation reimbursements, for the period January 2007 through March 2015 noted that appellant received an unusual amount in mileage reimbursement funds related to her workers' compensation claim. During the course of the investigation, it was determined that she submitted a total of 964 requests for reimbursement for transportation service dates, from December 5, 2000 through August 13, 2014, where there were no corresponding medical services, appliances, or supplies; or had overstated mileage amounts; and/or reflected travel to/from work at a postal facility. The OIG provided 33 examples with corresponding exhibits of appellant's OWCP-957 forms from 2008 through 2012 which illustrated where there were no corresponding medical claims, appliances, or supplies; overstated mileage amounts; and had traveled to/from work at a postal facility. It determined that the yearly synopses from 2000 to 2014 totaled \$24,800.96 in reimbursement requests for which she was not entitled.

In a preliminary notice of overpayment dated December 15, 2015, OWCP advised appellant that she was overpaid \$24,800.96 in travel reimbursements for the period December 5, 2000 through August 13, 2014. It provided a summary of the overpayment charges, noting the specific date and amount of the overpayment. OWCP related that it appeared appellant was at fault in the creation of the overpayment because she willingly submitted claims for travel reimbursement without submitted corresponding documentation of medical appointments, overstated mileage, and received reimbursement for travel from the employing establishment. It provided appellant with an overpayment action request form, an overpayment recovery questionnaire (Form OWCP-20), and 30 days to request a pre-recoupment hearing, and/or contest the fact, amount, and fault of the overpayment.

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<sup>3</sup> Docket No. 10-1982 (issued July 11, 2011); Docket No. 17-0479 (issued March 19, 2019).

<sup>4</sup> The record contains medical travel refund request forms for approximately 33 dates in the period from 2008 through 2012, which appellant signed on 11/04/08, 8/7/09, 5/2/09, 2/22/11, 4/28/11, 11/13/11, and 11/28/12.

On January 11, 2016 appellant requested a prerecoupment hearing before a representative of OWCP's Branch of Hearings and Review. The hearing was held on September 15, 2016.

By decision dated November 30, 2016, the OWCP hearing representative finalized the December 15, 2015 preliminary overpayment determination.

Appellant subsequently appealed to the Board. By decision dated March 19, 2019, the Board set aside OWCP's November 30, 2016 decision which found that appellant was with fault for an overpayment of \$24,800.96 during the period December 5, 2000 through August 13, 2014 due to incorrect payments of travel reimbursements.<sup>5</sup> The Board noted that while the employing establishment's OIG determined that appellant had submitted 964 requests for reimbursement over a 14-year period where there were no corresponding medical services, overstated mileage amounts, or reflected travel to/from work, only 33 of the requests for reimbursement were submitted as exhibits. It found that it was important to review all 964 medical travel refund requests forms as OWCP did not fully establish the existence of the total overpayment or explain the calculation methods used and their validity.

Following the Board's decision, OWCP requested all of the travel vouchers identified in the employing establishment's investigation. OWCP subsequently received 294 medical travel refund request forms signed by appellant for the period of March 12, 2007 through November 21, 2012. These travel refund request forms were signed by appellant on June 15, 2007; December 7, 2007; March 26, 2008; November 3, 2008; November 4, 2008; November 7, 2008; November 25, 2008; May 2, 2009; August 7, 2009; September 10, 2009; September 11, 2009; December 1, 2009; December 29, 2009; January 12, 2010; March 29, 2010; April 17, 2010; June 29, 2010; July 14, 2010; November 23, 2010; February 22, 2011; April 28, 2011; July 5, 2011; November 13, 2011; February 6, 2012; November 28, 2012; and February 6, 2017.

On October 3, 2019 OWCP made a preliminary determination that appellant received a \$16,931.91 overpayment of compensation for the period March 12, 2007 through November 21, 2012 because she received travel expense reimbursement which was not supported by medical documents or was unauthorized. It found her with fault in the creation of the overpayment because she willingly submitted claims for travel reimbursement without providing corresponding documentation for medical claims, appliances or supplies, over stated mileage amounts, and received reimbursement for travel to/from work at a postal facility which she knew or should have reasonably been aware were incorrect. OWCP provided mileage reimbursement rates<sup>6</sup> and advised how the overpayment amounts were calculated.<sup>7</sup> It provided a list of specific dates from March 12, 2007 through November 21, 2012 with the amount OWCP paid for each date, which it found

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<sup>5</sup> Docket No. 17-0479 (issued March 19, 2019).

<sup>6</sup> The mileage reimbursement rate was \$0.375 for the period 1/1/2004 to 2/4/2005; \$0.400 for the period 2/4/2005-8/31/2004; \$0.485 for the period 9/1/2005 to 12/31/2005; \$0.445 for the period 1/1/2006 to 1/31/2007; \$0.485 for the period 2/1/2007 to 3/18/2008; \$0.505 for the period 3/19/2008 to 7/31/2008; \$0.585 for the period 8/1/2008 to 12/31/2008; \$0.550 for the period 1/1/2009 to 12/31/2009; \$0.500 for the period 1/1/2010 to 12/31/2011; \$0.510 for the period 1/1/2011 to 4/16/2012 and \$0.555 for the period 4/17/2012 to December 31, 2012.

<sup>7</sup> The mileage claimed on the date (rounded up) multiplied by the mileage rate for that date equaled the amount paid.

totaled \$16,932.91.<sup>8</sup> OWCP advised appellant to complete an accompanying Form OWCP-20 and submit supporting financial documentation. Additionally, it advised that, within 30 days of the date of the letter, she could request a telephone conference, a final decision based on the written evidence, or a pre-recoupment hearing. Appellant did not respond or submit any additional evidence.

By decision dated November 20, 2019, OWCP finalized the preliminary overpayment determination and the finding of fault. It required recovery of the overpayment in full.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8103 of FECA provides that the United States shall furnish to an employee who is injured while in the performance of duty, the services, appliances, and supplies prescribed or recommended by a qualified physician, which OWCP considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of the monthly compensation.<sup>9</sup> With respect to travel expenses for medical treatment, the regulations provide:

“(a) The employee is entitled to reimbursement of reasonable and necessary expenses, including transportation needed to obtain authorized medical services, appliances or supplies. To determine what a reasonable distance to travel is, OWCP will consider the availability of services, the employee’s condition, and the means of transportation. Generally, a roundtrip distance of up to 100 miles is considered a reasonable distance to travel. Travel taken by the shortest route, and if practical, by public conveyance. If the medical evidence shows that the employee is unable to use these means of transportation, OWCP may authorize travel by taxi or special conveyance.”<sup>10</sup>

In interpreting section 8103(a) of FECA, the Board has recognized that OWCP has broad discretion in approving services provided under FECA to ensure that an employee recovers from his or her injury to the fullest extent possible in the shortest amount of time. OWCP has administrative discretion in choosing the means to achieve this goal and the only limitation on OWCP’s authority is that of reasonableness.<sup>11</sup>

### **ANALYSIS - ISSUE 1**

The Board finds that this case is not in posture for decision.

By decision dated March 19, 2019, the Board set aside OWCP’s November 30, 2016 decision which found that appellant was with fault for an overpayment of \$24,800.96 during the period December 5, 2000 through August 13, 2014 due to incorrect payments of travel

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<sup>8</sup> This appears to be a typographical error as the total overpayment amount is for \$16,931.91.

<sup>9</sup> 5 U.S.C. § 8103; see *Dona M. Mahurin*, 54 ECAB 309 (2003).

<sup>10</sup> 20 C.F.R. § 10.315(a).

<sup>11</sup> See *B.H.*, Docket No. 17-0479 (issued March 19, 2019); *R.L.*, Docket No. 08-0855 (issued October 6, 2008).

reimbursements. The Board found that the case was not in posture for decision because the evidence of record did not include all of the OWCP-957 forms to establish the overpayment period, nor did OWCP explain the calculation methods used to determine the overpayment amount.

On remand, OWCP received 294 OWCP-957 medical travel refund request forms signed by appellant, in which she claimed mileage reimbursement for the period of March 12, 2007 through November 21, 2012.

A review of part of the initial dates identified by OWCP in its October 3, 2019 decision reflects that the medical evidence of record is devoid of any evidence to support medical services were rendered on March 12, April 4, April 11, April 13, 2007 as appellant claimed on June 15, 2017. Therefore, the Board affirms OWCP's finding of fact of overpayment.

However, the Board further finds that the case is not in posture for decision with regard to the amount of the overpayment. The Board notes that some of dates which OWCP listed as being subject to the overpayment were in fact supported by the evidence of record. For example, appellant claimed transportation for medical services on April 23, May 4, and May 7, 2007 and the evidence of record supported that physical therapy medical services were rendered, but OWCP listed such dates as being overpaid by OWCP. An another example includes, but is not limited to, OWCP's finding of an overpayment on October 17 and October 22, 2008 which the record supports that medical services were rendered in conjunction with appellant's accepted conditions. In light of the discrepancy between the evidence of record and OWCP's finding of an overpayment for certain dates, the Board finds that the final overpayment decision is insufficient to set forth a basis for appellant to understand how and why she received an overpayment in compensation in the amount of \$16,931.91 during the period in question. OWCP provided an exhaustive listing of the dates appellant was overpaid, but it failed to explain why the overpayment occurred on those dates or provide an accurate listing of the overpayment.

A claimant is entitled to an overpayment decision that clearly explains how the amount was calculated.<sup>12</sup> The Board finds that the overpayment decision in this case does not provide such an explanation. Therefore, the amount of overpayment has not been established.

On remand, OWCP shall prepare detailed calculations setting forth the exact amounts of overpayment. Following this and other such further development as deemed necessary OWCP shall issue a new preliminary overpayment determination.<sup>13</sup>

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<sup>12</sup> See *L.J.*, Docket No. 19-0800 (issued October 17, 2019); *A.J.*, Docket No. 18-1152 (issued April 1, 2019); *J.W.*, Docket No. 15-1163 (issued January 13, 2016); *O.R.*, 59 ECAB 432 (2008) with respect to overpayment decisions, OWCP must provide clear reasoning showing how the overpayment was calculated); see *Jenny M. Drost*, 56 ECAB 587 (2005) (to comply with OWCP's overpayment procedures, an overpayment decision must contain a clearly written explanation indicating how the overpayment was calculated).

<sup>13</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

### **CONCLUSION**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation because she was overpaid for mileage reimbursements. The case is not in posture for decision, however, with regard to the period and amount of the overpayment.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the November 20, 2019 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part and the case is remanded for further proceedings consistent with this opinion.

Issued: August 5, 2021  
Washington, DC

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Alternate Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board